



August 22, 2006

SUBJECT: AWARD OF TAXICAB FRANCHISE TO USA EXPRESS CAB**REPORT IN BRIEF**

A taxicab franchise application and required fees have been received from USA Express Cab. Staff has conducted an investigation into the applicants' backgrounds as required by Municipal Code Section 5.36.050. After careful review, staff has determined that the applicants meet the mandatory code requirements as established. Staff recommends that USA Express Cab be awarded a non-exclusive taxicab franchise.

BACKGROUND

There are currently five valid taxicab companies franchised to operate within the City of Sunnyvale. They are Santa Clara Cab, Netcab.com, Orange Cab, American Cab and A-1 Cab. USA Express Cab has previously operated with a franchise agreement, which expired on August 18, 2006. If granted, USA Express Cab will not resume operation until September 28, 2006.

USA Express Cab acknowledges and accepts the requirements of the Municipal Code as well as the taxicab franchise agreement. USA Express Cab is also aware of the right of the City of Sunnyvale to revoke or suspend the taxicab franchise if it is determined that there is a violation or non-compliance of the terms contained in Municipal Code Section 5.36.

EXISTING POLICY

The term "non-exclusive franchise" as used in the Sunnyvale Municipal Code means that the city does not limit the number of like franchises in operation at one time. If an applicant meets the provisions as outlined in the Municipal Code, then the franchise to operate a taxicab service should be issued.

The City's non-exclusive franchise requirements are derived from Municipal Code Chapter 5.36. It is unlawful to operate any taxicab in the City unless the owner applies for and obtains a franchise to do. The City Council may deny a franchise to any applicant if:

1. The applicant has been convicted of certain criminal offenses.
2. The proposed color scheme or other insignia may tend to confuse the identification with other franchises already operating within the city.

3. Any other reasonable cause exists which, within the City Council's sound discretion would render the proposed operation undesirable to the City of Sunnyvale.

A franchise shall be issued for a term of two years. At the expiration of the term the franchise shall be deemed expired and shall no longer be valid unless a new franchise is issued under the provisions of Municipal Code Chapter 5.36.

DISCUSSION

The owners of USA Express Cab have submitted information and documentation to demonstrate compliance with each of the criteria identified in Municipal Code Chapter 5.36, as outlined below.

1. Local Contact Requirement – USA Express Cab has provided a toll-free telephone number to its dispatchers, together with sufficient phone lines to provide for prompt response to callers.
2. Vehicles – USA Express Cab is the registered owner of one company owned vehicle that has been identified for operation under this franchise. The taxicab is green with the company name and telephone number in white lettering on the door.
3. Taximeter – Each taxicab, which has been identified for operation under the franchise, is equipped with a taximeter which must be inspected annually by the Santa Clara County Sealer of Weights and Measures. Staff has been provided with compliance reports for the vehicles identified for this franchise agreement.
4. Insurance – A letter of valid insurance has been provided from Placer Insurance Agency in the amount of \$1,000,000 combined single limit. This insurance will be in effect, with the City of Sunnyvale listed as Additional Insured, with a 30-day prior notice of cancellation clause as required. The company understands that it may not operate without proper insurance. Staff reviewed the letter and found that it meets the requirements of the Municipal Code.
5. Criminal History – A criminal history check of the applicants was conducted as required by code. The applicants have not been convicted of any felonies, narcotic violations, or crimes of moral turpitude as referenced in the Municipal Code.
6. Experience of Owner – The investigation has revealed that the applicants, Sham Kumar and Kulwant Lasher have significant histories in general businesses. Kulwant Lasher has owned transportation companies since 1995 and Sham Kumar has driven taxicabs since 1996 and became an

owner of the company in 2001. Both are familiar with the rules and regulations at local, state and federal levels.

7. Personnel – Individual drivers were not identified in the application, but each will be required to obtain a taxicab driver's permit issued by the Department of Public Safety. Currently this company has seven (7) drivers with valid permits. There is nothing to indicate that the future applicants for taxicab driver permits will not meet the permit requirements. The applicants are also adhering to the random drug testing requirements as established by State Law and are utilizing Schlim, McCabe & Associates for their Medical Review Officer Services.
8. Fees – The applicants have paid the required franchise application fee of \$386.00. The applicants agree to pay the quarterly vehicle fees that are due during the month following the quarter the agreement is signed and each quarter thereafter during the term of the franchise. The applicants have agreed to complete a Taxicab Franchise Questionnaire listing driver and vehicle information each quarter during the term of the franchise.
9. Fare Schedule – USA Express Cab has agreed to adopt the City's fee schedule regulating taxicab fares.

FISCAL IMPACT

Granting a taxicab franchise should have only minor fiscal impact relating to costs of monitoring the franchise for compliance. The revenue generated from this franchise due to application fees, quarterly vehicle fees, and the business license fee is projected to be approximately \$1,800 during the term of the agreement. This does not include revenue generated by the driver permits issued.

PUBLIC CONTACT

Posting of the Council Agenda, posting on the City's web site and publication in the San Jose Mercury News. Copies of the RTC were provided to Yellow Cab Co., Peninsula, Inc.

ALTERNATIVES

1. Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to USA Express Cab for the period of September 28, 2006 through September 27, 2008 per applicant request, and authorize the City Manager to execute necessary documents of agreement.
2. Do not introduce or adopt an ordinance awarding a non-exclusive franchise to USA Express Cab.

RECOMMENDATION

Staff recommends Council approves alternate #1.

Reviewed by:

Don Johnson, Director, Department of Public Safety
Prepared by: Rachel Vasquez, Sr. Office Assistant

Approved by:

Amy Chan
City Manager

Attachments

- A. Non-exclusive Franchise Ordinance
- B. Taxicab Franchise and Agreement

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AWARDING NONEXCLUSIVE
FRANCHISE TO SHAM KUMAR AND KULWANT LASHER
DOING BUSINESS AS USA EXPRESS CAB**

WHEREAS, Chapter 5.36 of the Sunnyvale Municipal Code establishes a procedure for the consideration and award of nonexclusive taxi franchises by the City of Sunnyvale; and

WHEREAS, Sham Kumar and Kulwant Lasher, doing business as USA Express Cab, have applied for a nonexclusive taxicab franchise; and

WHEREAS, public notice in accordance with Sunnyvale Municipal Code Section 5.36.070 has been given that the City Council of the City of Sunnyvale would hold a public hearing for the purpose of determining whether to award the franchise; and

WHEREAS, the City Council finds that it would be in the best interests of the City of Sunnyvale to award a nonexclusive franchise for taxicab service to the applicants;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FRANCHISE GRANTED. The City of Sunnyvale hereby grants to Sham Kumar and Kulwant Lasher, doing business as USA Express Cab (hereinafter "Franchisee"), a nonexclusive Franchise for taxicab service within the corporate boundaries of the City of Sunnyvale as such boundaries presently exist or as they may be changed during the term of this Franchise. The Franchisee shall conduct its operations under the Franchise in strict compliance with Sunnyvale City Charter and Chapter 5.36 of the Sunnyvale Municipal Code, and any amendments thereto, together with all applicable laws and regulations of the State of California, the United States or any regulatory agency having jurisdiction.

SECTION 2. TERM. The term for which this Franchise is granted shall be two years commencing September 28, 2006, and ending at 12:00 midnight on September 27, 2008.

SECTION 3. CONSIDERATION. The Franchisee shall pay quarterly to the City as consideration for the granting of this Franchise the amounts per vehicle as set forth in the City's Master Fee Schedule, which is incorporated by reference herein.

SECTION 4. USE OF CITY STREETS. The Franchisee hereby is given permission to use City streets for the purpose of providing taxicab service in accordance with the terms of this ordinance and the franchise agreement.

SECTION 5. GENERAL CONDITIONS. This Franchise is granted subject to the terms and conditions set forth in the "Taxicab Franchise Agreement" attached and incorporated herein.

SECTION 6. ACCEPTANCE OF FRANCHISE TERMS AND CONDITIONS. This Franchise shall not become effective until the Franchisee accepts the Franchise by executing the Taxicab Franchise Agreement within ten (10) days after adoption of this ordinance.

SECTION 7. APPROVAL OF FRANCHISE AGREEMENT—EXECUTING AND ATTESTING. The Taxicab Franchise Agreement is hereby approved, and the City Manager is authorized to execute it on behalf of the City.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 9. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 10. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2006, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2006, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

TAXICAB FRANCHISE AND AGREEMENT

THIS FRANCHISE AND AGREEMENT, dated _____, 2006, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein "City") and Sham Kumar and Kulwant Lasher, doing business as USA Express Cab (herein "Franchisee").

RECITALS

WHEREAS, Franchisee has filed a verified application of a nonexclusive Franchise to operate a taxicab service pursuant to Chapter 5.36 of the Sunnyvale Municipal Code; and

WHEREAS, on _____, 2006, the City Council passed and adopted Ordinance No. _____, after Notice and Public Hearing, approving issuance of such Franchise;

NOW, THEREFORE, in consideration of the award of a nonexclusive Franchise and of the mutual covenants and conditions as set forth herein, it is agreed as follows:

1. City grants to Franchisee a nonexclusive Franchise to use the public streets, ways, alleys and places, as the same now or may hereafter exist, within the corporate limits of the City of Sunnyvale as they presently exist or as they may be changed during the term of this Franchise by annexations or detachments, in connection with furnishing the City of Sunnyvale and its inhabitants with taxicab service for a term of two (2) years, beginning September 28, 2006, and ending at midnight on September 27, 2008.

2. The Franchisee during the term of this Franchise shall pay to the City the consideration based on the number of vehicles in service under the Franchise, as set forth in the City's Master Fee Schedule, which is incorporated by reference herein.

3. The Franchisee shall:

A. Appear and defend all actions against the City arising out of the exercise of the Franchise and shall indemnify and save City, its officers, employees and agents harmless of and from all claims, demands, actions or causes of action of every kind and description resulting directly or indirectly, arising out of, or in any way connected with, the exercise of the Franchise.

B. Obtain and keep in force during the term of the Franchise insurance in compliance with the requirements of Sunnyvale Municipal Code Section 5.36.300.

C. Comply with all other requirements of Sunnyvale Municipal Code Chapter 5.36 and any amendments thereto, and with all applicable laws and regulations of the State of California, and all applicable laws and regulations of the United States, or any regulatory agency having jurisdiction. Franchisee shall establish a controlled substance and alcohol certification program. The program shall be included in a written company policy. Each driver must sign for receipt of said policy, and the receipt shall be retained by Franchisee. A copy shall be provided to DPS upon request. Every driver shall test negative for controlled substances as specified in 40 CFR Part 40 and 49 CFR Part 382.

4. The Franchise granted hereunder shall not be assignable, either voluntarily or by operation of law, without the prior approval of the City Council, by resolution. At least forty-five (45) days prior to the date for the formal transfer of such interest or ownership, the Franchisee shall so notify City in writing. If the Franchisee at any time during the term of this Franchise becomes insolvent, or if any proceeding in bankruptcy shall be instituted by or against the Franchisee, or if the Franchisee shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy, or receiver of any property of the Franchisee shall be appointed in any suit or proceeding brought by or against the Franchisee, or if the Franchisee shall make an assignment for the benefit of creditors, then and in each and every such case this Franchise and the rights and privileges granted thereby shall immediately cease, and be forfeited and cancelled, without notice and without suit or other proceeding.

5. If the Franchisee at any time during the term of this Franchise shall sell, exchange or otherwise transfer more than one-half of the equity interest in or ownership of the taxicab service business, whether with or without the property, equipment or other assets in connection therewith, permitted to be operated by the Franchise granted hereunder, the City Council shall have the right to cancel and revoke the Franchise following a hearing held after then (10) days' written notice thereof to the Franchisee. The right to cancel and revoke the Franchise shall not be triggered by any mortgage or deed of trust made in good faith by the Franchisee.

6. This Franchise and Agreement may be amended by the City during its term with the consent of the Franchisee.

7. The Franchise is granted to and is accepted by the Franchisee upon the express condition that the public streets, ways, alleys and places shall be used and taxicab service furnished in strict compliance with the terms of this Franchise Agreement, the Sunnyvale City Charter, and all applicable provisions of the Sunnyvale Municipal Code.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE
A Municipal Corporation

City Clerk

City Manager

APPROVED AS TO FORM:

USA EXPRESS CAB

City Attorney

Sham Kumar

Kulwant Lasher